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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re HEIDI C. et al., Persons Coming
Under the Juvenile Court Law.

B218480

(Los Angeles County
Super. Ct. No. CK77341)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

DAVID F.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,
Valerie Skeba, Referee. Affirmed.

Lori Siegel for Appellant.

James M. Owens, Assistant County Counsel, and Denise M. Hippach, Deputy
County Counsel, for Plaintiff and Respondent.

INTRODUCTION

This is a dependency case that involves three children: Heidi E. C. (Heidi), a thirteen-year-old girl; Harrison F., an eight-year-old boy; and Landon F., a two-year-old boy. Appellant David F. (father) is the stepfather of Heidi and the presumed and biological father of Harrison and Landon. The juvenile court asserted jurisdiction over Heidi, Harrison and Landon after father sexually abused Heidi. The court then removed the children from father's custody and placed the children with their mother, Heidi C. (mother).

Father does not challenge the court's jurisdictional findings or disposition with respect to Heidi. He does, however, contend that the court erroneously asserted jurisdiction over Harrison and Landon, and that the court erroneously removed his sons from his physical custody. For reasons we shall explain, we reject father's arguments and affirm the juvenile court's jurisdictional and dispositional findings and order.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Father's Sexual Abuse and Harassment of Heidi*

Father began living with mother and Heidi when Heidi was four years old. Mother and father married in November 2007. Prior to their marriage, the couple had two sons: Harrison and Landon. The whereabouts of Heidi's alleged biological father, Miguel O., is unknown.

When Heidi was 12 years old, father began sexually abusing and harassing her. On three or four separate occasions father touched Heidi's breasts over her clothing. The first incident occurred when Heidi, Harrison and father were playing and tickling each other. Father's hand brushed over Heidi's breast. As he did this, father bit his lower lip and made a facial gesture to show that he enjoyed it. Although father claimed it was an accident, Heidi believed that father touched her intentionally and that the touching was sexual.

In the second incident, father “straight out” touched Heidi’s breast in the hallway of their home. When Heidi asked father to stop doing that, father said “I am not bad” and “I am not doing anything to you.” He also said that he touched her breast to make sure it was real.

The third incident occurred in the kitchen of their home. Father was wearing tight brief underwear at the time. As father touched Heidi’s breast, she could see his “bulge” and “sack.”

Father did many other things that made Heidi feel very uncomfortable. He frequently patted Heidi on the buttocks when she passed him in their apartment. On several occasions father barged into Heidi’s room while she was changing.

Father wore his tight brief underwear “all the time, all day” around the family’s apartment. Because he was unemployed, father spent a lot of time at home. Father regularly called Heidi “mamasita,” and then blinked his eye at her or bit his lower lip. Heidi interpreted mamasita to mean “sexy” in Spanish.

Father frequently asked Heidi for a kiss on the cheek. When Heidi complied, father would quickly turn his face so that Heidi would kiss him on the lips. At the dinner table, father sometimes looked at Heidi and made facial gestures indicating that he was sexually aroused.

When father was alone with Heidi, he said inappropriate things to her. For example, father said to Heidi, “If something happens to your mother, we’re going to live far away.” He also asked Heidi, “If I win the lottery, would you marry me?” and “Do you want to be my girlfriend?” In addition, father made numerous comments about the development of Heidi’s breasts and how big they were.

2. *Father's Arrest and Incarceration*

On May 18, 2009, a case social worker from respondent Los Angeles County Department of Children and Family Services (Department) interviewed members of the family regarding father's sexual abuse of Heidi. Father said that he was "shocked" by the allegations and denied that he touched Heidi's breasts or buttocks, denied making inappropriate statements to her, and claimed that he always wore shorts or pajamas while at home.

The case social worker did not believe father and called the police. Father was arrested and charged with lewd and lascivious conduct with a minor under the age of 14. Later, father pled no contest to misdemeanor battery and was convicted of that crime. Father was sentenced to 30 days in jail, placed on probation for 3 years, and ordered to attend sex-offender counseling.

3. *Harrison's Observations of the Abuse and Harassment*

In response to questions by a Department employee, Harrison stated that he saw father touch Heidi's breasts and buttocks on several occasions. Harrison also stated that on 9-10 occasions he saw father ask Heidi to give him a kiss on the cheek, and then turn his face so that she would kiss his mouth. Harrison further stated that he knew father's conduct was wrong and that it made him feel "mad." Harrison also stated that he knew that father was in jail for touching Heidi.

Harrison said that he was not afraid of father and was not physically or sexually abused by him. There was also no evidence of physical or sexual abuse of Landon.

4. *Proceedings in the Juvenile Court*

On May 21, 2009, the Department filed a juvenile dependency petition. The petition alleged that the court had jurisdiction over Heidi, Harrison and Landon pursuant to Welfare and Institutions Code section 300¹ based on allegations against father, mother

¹ Except as otherwise stated, all future section references are to the Welfare and Institutions Code.

and Miguel O.² Of relevance here, the court asserted jurisdiction over Harrison and Landon pursuant to section 300, subdivisions (d) [sexual abuse]³ and (j) [abuse of sibling]⁴ based on the following allegations: “On May 4, 2009, and on numerous prior occasions . . . [father] sexually abused the child Heidi by fondling the child’s breasts and buttocks. The sexual abuse of the child Heidi by [father] endangers the child’s physical and emotional health and safety and creates a detrimental home environment and places the child and the child’s siblings, Harrison [F.] and Landon [F.] at risk of physical and emotional harm, damage, danger, sexual abuse and failure to protect.”

On May 21, 2009, the juvenile court found a prima facie case for detaining the minors from father and ordered that father stay away from the family home and Heidi. The court placed the children with mother, who moved out of the apartment she and the children previously shared with father.

² The allegations against mother were later struck by the court. The allegations against Miguel O. pertained only to the court’s jurisdiction over Heidi and are not at issue here.

³ Section 300, subdivision (d) provides: “The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.”

⁴ Section 300, subdivision (j) provides: “The child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.”

On August 5, 2009, the court held a hearing regarding its jurisdiction and the initial disposition of the case. Both Heidi and father testified. Heidi repeated her allegations of sexual abuse against father, but did not provide as much detail as she had provided to the Department case social worker. Father again denied virtually all of Heidi's allegations.

The juvenile court found Heidi "credible", sustained the petition with respect to father, and declared the children dependents of the court. The court stated: "I did think about whether Harrison and Landon should come under the jurisdiction of the court because they are in a different situation at least. They're biological children, and they're male. [¶] However, I think under *Karen R.* and *Rubisela E.*, when you have children that are observing the conduct toward their sister, especially an eight year old—even an eight-year-old child was able to recognize that this behavior was wrong—I think that's pretty substantial evidence that they do fall under [section 300, subdivisions] (d) and (j)(1)."

The court further found, by clear and convincing evidence, that a substantial danger existed to the physical health of Harrison and Landon and to their emotional well-being if the children were returned home, and that there was no reasonable means to protect the children without removing them from father's custody.

Father filed a timely notice of appeal of the juvenile court's August 5, 2009, jurisdictional and dispositional order.

CONTENTIONS

Father contends that there was no substantial evidence supporting the juvenile court's jurisdictional and dispositional findings and order.

DISCUSSION

1. Standard of Review

"On appeal, the 'substantial evidence' test is the appropriate standard of review for both the jurisdictional and dispositional findings. [Citations.] The term 'substantial evidence' means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value." (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.)

“In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

2. *There Was Substantial Evidence Supporting the Juvenile Court’s Jurisdictional Findings and Order*

The juvenile court has jurisdiction over a child if there is a substantial risk that the child will be sexually abused in the future in light of the sexual abuse of the child’s sibling (§ 300, subd. (j)), or for any other reason (§ 300, subd. (d).) Here, the juvenile court found that in the wake of father’s sexual abuse of Heidi, there was a substantial risk that Harrison and Landon would be sexually abused. We hold that there was substantial evidence supporting this finding.

Father relies on *In re Rubisela E.* (2000) 85 Cal.App.4th 177. There, Division Two of this court held that the juvenile court did not have jurisdiction over the brothers of a female sexual abuse victim. (*Id.* at p. 199.) However, as we observed in *In re Karen R.* (2001) 95 Cal.App.4th 84, the *In re Rubisela E.* court “conceded that sexual abuse of a female child can be harmful to a male sibling.” (*In re Karen R.*, at p. 90.) The *In re Rubisela E.* court noted: “We do not discount the real possibility that brothers of molested sisters can be molested . . . or in other ways harmed by the fact of the molestation within the family. Brothers can be harmed by the knowledge that a parent has so abused the trust of their sister. They can even be harmed by the denial of the perpetrator, the spouse’s acquiescence in the denial, or their parents’ efforts to embrace them in a web of denial.” (*In re Rubisela E.*, at p. 198.)

In *In re Karen R.*, we affirmed a jurisdictional finding under section 300, subdivision (d) as to a younger brother and a younger sister of a female sexual abuse victim. We concluded that “a father who has committed two incidents of forcible incestuous rape of his minor daughter reasonably can be said to be so sexually aberrant that both male and female siblings of the victim are at substantial risk of sexual abuse

within the meaning of section 300, subdivision (d), if left in the home. To the extent other cases suggest only female siblings are in substantial danger of sexual abuse after a sexually abused female sibling has been removed from the home due to sexual abuse by a father, we respectfully disagree. (See *In re Rubisela E.*, *supra*, 85 Cal.App.4th at p. 197; [citation].) Although the danger of sexual abuse of a female sibling in such a situation may be greater than the danger of sexual abuse of a male sibling, the danger of sexual abuse to the male sibling is nonetheless still substantial. Given the facts of this case, the juvenile court reasonably could conclude every minor in the home, regardless of gender, was in substantial danger of sexual abuse by father.” (*In re Karen R.*, *supra*, 95 Cal.App.4th at pp. 90-91.)

In *In re P.A.* (2006) 144 Cal.App.4th 1339, the father sexually abused his nine-year-old daughter by touching her vagina under her clothes and on top of her underwear. (*Id.* at p. 1341.) Although the victim’s brothers, who were eight and five years old, had seen domestic violence between the father and the mother, they had not observed the victim being sexually abused and there was no evidence that the brothers were sexually abused. (*Id.* at pp. 1342-1343.)

This court held that the juvenile court properly could conclude that the father’s presence in the home placed his sons at risk of sexual abuse. (*In re P.A.*, *supra*, 144 Cal.App.4th at p. 1347.) We stated: “The abuse in this case concededly is less shocking than the abuse in *Karen R.* However, this does not mean that *Rubisela E.* therefore applies. Rather, we are convinced that where, as here, a child has been sexually abused, any younger sibling who is approaching the age at which the child was abused, may be found to be at risk of sexual abuse. As we intimated in *Karen R.*, aberrant sexual behavior by a parent places the victim’s siblings who remain in the home at risk of aberrant sexual behavior.” (*Ibid.*, fn. omitted.)

In re P.A. is on point. Although the age difference between Heidi and her brothers is greater than the age difference between the victim in *In re P.A.* and her brothers, father’s abuse in this case is in some ways more disturbing than the abuse in *In re P.A.* Father repeatedly sexually abused Heidi *in front of Harrison*. By doing so, father

displayed a callous disregard for *Harrison's* well being. Further, father's repeated denial of the slightest misconduct, even in the face of contrary statements by Harrison and mother, indicate that father has not come close to dealing with his sexually aberrant behavior towards a child he has raised since she was four years old. For all of the foregoing reasons, we conclude that substantial evidence supports the juvenile court's assertion of jurisdiction over Harrison and Landon under section 300, subdivisions (d) and (j).

3. *There Was Substantial Evidence Supporting the Juvenile Court's Dispositional Findings and Order*

A dependent child may be taken from the physical custody of the parent with whom the child resided at the time the juvenile dependency petition was initiated if the juvenile court finds clear and convincing evidence that there is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child if the child were returned home, and there are no reasonable means by which the child's physical health can be protected without removing the child from the child's parent. (§ 361, subd. (c)(1).)

In this case, the juvenile court ordered that Harrison and Landon be taken from father's physical custody on the grounds that there was clear and convincing evidence that a substantial danger existed to the physical health of Harrison and Landon and to their emotional well-being if the children were returned home, and that there was no reasonable means to protect the children without removing them from father's custody. We conclude that there was substantial evidence to support the juvenile court's dispositional findings and order.

As noted above, there was a substantial danger that Harrison and Landon would themselves be sexually abused if they remained in father's custody. Further, father repeatedly sexually abused Heidi in front of Harrison and has shown no signs that he will change his sexually aberrant behavior in the future. We thus hold that there was substantial evidence supporting the juvenile court's dispositional findings and order.

DISPOSITION

The order of the juvenile court dated August 5, 2009, asserting jurisdiction over Harrison and Landon and removing Harrison and Landon from father's custody is affirmed.

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KITCHING, J.

We concur:

KLEIN, P. J.

CROSKEY, J.